IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.439 OF 2005
IN
NOTICE OF MOTION NO.2659 OF 2004
IN
SUIT NO.1711 OF 1994

Romesh S. Sharma — Appellant
vs.
Raja Construction Co. — Respondent

Mr.Rajiv Narula i/b.M/s.J.Narula & Associates for the appellant.

Mr.Dinesh Shah i/b. M/s.Lilani Shah & Co. for the respondent.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 13th June 2005

P.C.

Heard Mr.Rajiv Narula, the learned counsel for the appellant.

2. In paragraph 1 of the plaint, the plaintiff has asserted that it is a partnership firm registered under the Indian Partnership Act, 1932. The defendant (the present appellant) has denied this fact in the written statement.

3. In view of the serious dispute on facts about the registration of the plaintiff-firm under the Indian

Partnership Act, 1932, obviously, the plaint could not have been rejected.

4. The learned counsel for the appellant sought to urge that in response to the notice of motion taken out by the present appellant for rejection of plaint, the plaintiff has admitted that the Registrar of Firms issued the certificate of registration on 12th July 2004. The learned counsel for the appellant sought to contend that by this admission, it is clear that the suit was filed by the unregistered firm.

5. We are unable to accept the submission of the appellant. In the application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of plaint, the disputed question of fact cannot be decided. It is settled legal position that in a case where the fact asserted in the plaint is seriously disputed by the defendant, the plaint cannot be rejected.

6. The reply filed by the plaintiff to the present notice of motion does not contain the unambiguous and unequivocal admission about the unregistered character of the firm as canvassed by the learned counsel for the appellant.

7. The suit was filed in the year 1994. The written

statement was filed by the defendant (present appellant) way back on 22nd November 1999. It was only in the year 2004 i.e. almost after 10 years of the pendency of the suit that the defendant took out notice of motion for rejection of plaint on the ground that the firm was unregistered and in the light of the bar provided under Section 69(2) of the Indian Partnership Act, the suit was not maintainable. Keeping the pleading in mind, if the learned trial Judge observed that the objection regarding maintainability of the suit for want of registration would require evidence and that it will be decided at the time of trial, the order cannot be faulted.

8. The appeal does not deserve to be admitted.

9. Dismissed in limine.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)